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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,322	05/04/2001	Paul F. Klein	G&C 30695.21-US-U1	9218

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EXAMINER	
BAYARD, DJENANE M	

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/849,322	KLEIN, PAUL F.	
	Examiner	Art Unit	
	Djenane M Bayard	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-14,16-27 and 29-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-14,16-27 and 29-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to Amendment filed on 11/16/2004 in which claims 1, 3-14, 16-27 and 29-39 are pending. Applicant's arguments have been fully considered by they are not persuasive. Therefore, this case is made FINAL.

Response to Arguments

2. As per claim 1, 14 and 27, Applicant argues that the cited claims are directed to obtaining information across a network based on a speed of the network connection. To accommodate the different sizes o f information to be obtained, the claims provide the ability to determine the speed of the network connection. The client transmits a request, across the network connection for an object of a pre-known size and properties. The speed of the network is then based on a measurement of the round-trip response time calculated from the transmitting of the request. However, Borella et al teaches wherein Network Latency is determined by sending a small portion the requested original electronic content to the user computer and using the time transmission of the one complete electronic HTML page and reception of the request can be used as a round-trip network latency estimate (See col. 5, lines 27-45).

As per claim 8, Applicant argues that the library aspect of claim 8 reflect the retrieval of the information from across the network connection. Furthermore, Applicant stated that Dryfoos failed to teach any transmittal of information form a library across a network. A new prior art of U.S. Patent Application No. 2004/0153792 to Merriam has been introduced to teach the above limitations.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-7, 9, 12-20, 25-33, 35, 39 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,182,125 to Borella et al.

a. As per claims 1 and 27, Borella et al teaches a computer-implemented method for obtaining information across a network comprising: determining a speed of a network connection to which a computer is attached by (See col. 5, lines 8-18): 1) A client transmitting a request, across the network connection, to a calibrated object library on a server, for an object of apre-known size and properties; 2) obtaining the object of the pre-known size and properties from across the network connection ; and measuring a round-trip response time calculated form the transmitting of the request to completion of the obtaining of the object form across the network connection (See col. 5,lines 27-44, Network Latency is determined by sending a small portion the requested original electronic content to the user computer and using the time transmission of the one complete electronic HTML page and reception of the request can be used as a round-trip network latency estimate) and obtaining information from across the network connection based on the speed of the network connection, wherein a size of the information to be obtained decreases as the speed of the network connection decreases (See col. 5, lines 62-67 and col. 6, lines 1-8).

b. As per claim 14, Borella et al teaches a computer-implemented system for obtaining information across a computer network comprising: (a) a client (See col. 2, lines (10-11); (b) an adaptive agent executing on the client, wherein the adaptive agent is configured to: (i) determine a speed of a network connection to which a computer is attached; A client transmitting a request, across the network connection, to a calibrated object library on a server, for an object of apre-known size and properties; 2) obtaining the object of the pre-known size and properties from across the network connection ; and measuring a round-trip response time calculated form the transmitting of the request to completion of the obtaining of the object form across the network connection See col. 5,lines 27-44, Network Latency is determined by sending a small portion the requested original electronic content to the user computer and using the time transmission of the one complete electronic HTML page and reception of the request can be used as a round-trip network latency estimate); and (ii) obtain information from across the network connection based on the speed of the network connection, wherein a size of the information to be obtained decreases as the speed of the network connection decreases (See col. 5, lines 62-67 and col. 6, lines 1-8).

c. As per claims 2, 15 and 28, Borella et al teaches wherein the determining a speed of a network connection comprises: transmitting a request for information of a pre-known size across the network connection (See col. 5, lines 8-10, Remarks: ICMP Ping packets are a known size); obtaining the information of the pre-known size from across the network connection; and measuring a round-trip response time calculated from the transmitting of the request to completion of the obtaining of the information from across the network connection (See col. 5, lines 16-18).

d. As per claims 3, 16 and 29, Borella et al teaches wherein the determining a speed of a network connection comprises pinging a host where the information is stored from across the network connection (See col. 5, lines 8-10).

e. As per claims 4, 17 and 30, Borella et al teaches wherein the information comprises graphics (See col. 6, lines 50-60).

f. As per claims 5, 18 and 31, Borella et al teaches wherein the information to be obtained is reduced in size such that the graphic is physically smaller visually as the speed of the network connection decreases (See col. 6, lines 60-67).

g. As per claims 6, 19 and 32, Borella et al teaches wherein the information to be obtained is reduced in size such that color is diminished from the graphic as the speed of the network connection decreases (See col. 7, lines 6-19).

h. As per claims 7, 20 and 33, Borella et al teaches wherein the information to be obtained is reduced in size such that color is removed and shades of gray are reduced from the graphic as the speed of the network connection decreases (See col. 7, lines 6-19).

i. As per claims 9 and 35, Borella et al teaches wherein the information is obtained from a server across the network connection to a client (See col. 4, lines 33-40).

j. As per claim 12, Borella et al teaches determining particular information to obtain based on the speed of the network connection; and obtaining the particular information from the server (See col. 6, lines 1-15).

k. As per claims 13 and 39, Borella et al teaches issuing a request for information (See col. 4, lines 32-36); transmitting the speed of the network connection to the server; and obtaining particular information from the server, wherein the server determines the particular information based on the speed of the network connection (See col. 5, lines 43-46).

l. As per claim 22, Borella et al teaches wherein the adaptive agent is configured to obtain the information from a server across the network connection (See col. 3, lines 10-20).

m. As per claim 25, Borella et al teaches wherein the client is further configured to: determine particular information to obtain based on the speed of the network connection; and obtain the particular information from the server (See col. 4, lines 33-40).

n. As per claim 26, Borella et al teaches wherein the client is further configured to: issue a request for information; transmit the speed of the network connection to the server; and obtain particular information from the server, wherein the server determines the particular information based on the speed of the network connection (See col. 4, lines 33-40).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 8, 21 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,182,125 to Borella et al in view of U.S. Patent Application No. 2004/0153792 to Merriam.

a. As per claims 8, 21 and 34, Borella et al teaches the claimed invention as described above. However, Borella fails to teach wherein the information is obtained across the network connection from one or more libraries that maintain the information in various sizes.

Merriam teaches wherein the information is obtained across the network connection from one or more libraries that maintain the information (See page 4, paragraph [0038])

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the information is obtained across the network connection from one or more libraries that maintain the information as taught by Merriam et al in the claimed invention of Borella et al in order in order gather components of the performance time to download objects 9See page 4, paragraph [0034]).

6. Claims 10-11, 23-24, 36-37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,182,125 to Borella et al in view of U.S. Patent No. 6,212,564 to Harter et al.

a. As per claim 10, 36 Borella et al teaches the claimed invention as described above. However, Borella et al fails to teach wherein the determining a speed is performed by an applet obtained by the client.

Harter et al teaches wherein the determining a speed is performed by an applet obtained by the client (See abstract).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the determining a speed is performed by an applet obtained by the

client as taught by Harter et al in order to optimized the client based on characteristics performance (See abstract).

b. As per claims 11, 24 and 37, Borella et al teaches the claimed invention as described above. However, Borella et al fails to teach wherein an applet tag corresponding to the obtained applet is present in a web page obtained by the client, wherein the applet tag is dynamically inserted into the web page by the server.

Harter et al teaches wherein an applet tag corresponding to the obtained applet is present in a web page obtained by the client, wherein the applet tag is dynamically inserted into the web page by the server (See col. 3, lines 11-31).

It would have bee obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein an applet tag corresponding to the obtained applet is present in a web page obtained by the client, wherein the applet tag is dynamically inserted into the web page by the server as taught by Harter et al in the claimed invention of Borella et al in order to optimize the client based on characteristics performance (See abstract).

c. As per claim 23, Borella et al teaches the claimed invention as described above. However, Borella et al fails to teach wherein the adaptive agent is an applet.

Harter et al teaches wherein the adaptive agent is an applet (See col. 4, lines 41-65).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the adaptive agent is an applet as taught by Harter et al in the

claimed invention of Borella et al in order to optimize the client based on characteristics performance (See abstract).

d. As per claim 38, Borella et al teaches the claimed invention as described above. However, Borella et al fails to teach the client determining particular information to obtain based on the speed of the network connection; and the client obtaining the particular information from the server.

Harter et al teaches the client determining particular information to obtain based on the speed of the network connection; and the client obtaining the particular information from the server (See col. 4, lines 31-50).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the client determining particular information to obtain based on the speed of the network connection; and the client obtaining the particular information from the server as taught by Harter et al in the claimed invention of Borella et in order to optimize the client based on characteristics performance (See abstract).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M Bayard whose telephone number is (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Djenane Bayard

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER